



Excise Tax Advisory

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THIS ETA HAS BEEN CANCELLED EFFECTIVE APRIL 21, 2003

INTERCOMPANY LOANS OF GASOLINE, OIL, AND SIMILAR PRODUCTS

Issued July 15, 1966

Are intercompany loans of gasoline, oil and similar products subject to the Business and Occupation Tax as sales?

Major petroleum distributors were making exchanges of stock on a regular and continuing basis to cover shortages occurring because of a lack of storage or production facilities and to effect savings in transportation costs. The transfers were carried as loans on the books of account and did not include the products so acquired as part of the regular inventory. The loans were generally repaid in kind or with a substitute product and no monetary consideration was involved.

The Commission held that these transactions constituted "sales" within both the language and intent of RCW 82.04.040, since there was a "... transfer of the ownership of, title to, or possession of property for a valuable consideration...".

It noted that the transactions constituted business activities pursuant to RCW 82.04.140, despite the allegations (1) that the transactions were strictly on a nonprofit basis, (2) that the transfers did not involve money, and (3) that the exchanges could be considered as loans.

The Commission observed that "business" is not limited to those activities which result in profit.

Secondly, it was noted that "expressed in terms of money" as used in RCW 82.04.090 means that when consideration is something other than money (credits, rights, or other property), the value shall be converted to money terms for determination of the measure of tax.

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2- prefix are new advisories, ETBs that have been reviewed, revised, or readopted after review under the Department's regulatory improvement program. or advisories that have been revised and/or readopted

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Thirdly, the Commission classified the exchanges as transfers for resale and not loans which require the return of the same property with ownership remaining at all times in the lender.

In arriving at its conclusion that the transfers were taxable the Commission considered the availability of a possible exemption under RCW 82.04.425 (accommodation sales) where sales are made to fill a "bona fide existing order of customer." It concluded that such an exemption was inapplicable to an accumulation of orders for fungible or unascertained goods. The holding clarified and distinguished an earlier exemption granted for emergency or sporadic transfers.